

TURA ADVISORY COMMITTEE MEETING

Summary of Discussion

May 5, 2008

Advisory Committee

Members Present:

Andy Goldberg, Tolle Graham, Edward Gomes, Robert Napolitano, Lucy Servidio, Mark Rossi, William Judd, Sarah Little, Gary Nedelman, Lee Ketelsen, Robert Pliskin

Others Present:

TURA program staff: Rich Bizzozero (EEA), Mike Ellenbecker (TURI), Heather Tenney (TURI), Liz Harriman (TURI), Rachel Massey (TURI), Martin Reynolds (OTA), Glenn Keith (MassDEP), John Raschko (OTA), Rick Reibstein (OTA)
Members of the public: David Wawer (MCTA). Steve Rosario (ACC-Northeast)

Introductions and Summary of Administrative Council Meeting

- Rich Bizzozero opened the meeting and Advisory Committee members introduced themselves.
 - The March 10, 2008 meeting summary was approved with no changes. Rich then summarized the April 16, 2008 Administrative Council meeting.
 - He outlined possible regulatory approaches for dry cleaners should perchloroethylene (PCE) be designated as a higher hazard substance (HHS). (For instance, one approach might allow users to “self certify” as part of the Environmental Results Program (ERP). Rich said that during preliminary discussions with EEA and MassDEP legal teams, statutory concerns had surfaced that may limit flexibility in regulating PCE or other reportable substances.
 - A committee member asked if there are tax incentives available to support dry cleaners switching to machines that do not use PCE. TURA program staff did not have information on tax incentive options, but mentioned other resources, such as small-business loan programs and incentives from electricity providers based on energy savings.
 - Rich said that in the opinion of EEA’s legal department, the council’s vote and subsequent regulation promulgation last fall, to retain all the CERCLA chemicals for the remainder of calendar year 2008 (August 2, 2008 thru December 31, 2008), fulfilled the statutory requirement for the council to “take action” by August 1, 2008.

Perchloroethylene – Higher Hazard Substance designation - Fiscal impact to Dry Cleaners

- Rachel Massey summarized two TURI documents: “Proposed Higher Hazard Designation for PCE: Questions and Answers about Implications for Dry Cleaners” and “Financial analysis for garment cleaners: Implications of Participating in the TURA program.” Members participated in an extended discussion of: the number of PCE users in Massachusetts; average PCE equipment life; equipment depreciation; the rationale for potentially providing exemptions to certain HHS users; financial support vehicles for dry cleaners; and the grant-making authority of TURI and OTA.
- A member noted that according to an industry association, many facilities are shifting away from PCE. If this is the case, the member noted that the TURA planning process will be particularly

important in ensuring that facilities make good choices about alternatives. The member also expressed concern that if the decision on PCE is delayed, many facilities may shift to less preferable alternatives due to lack of education and training.

- Regarding the role of the ERP, one member pointed out that ERP reaches more facilities than TURA because it does not have a 10-employee threshold. Another member expressed concern that ERP does not provide any TUR training.
- A committee member commented that their and the council's responsibility is to recommend whether to designate a substance as higher hazard, not to resolve implementation issues, and that those could be handled by the TURA program agencies.
- Rich said that prior to its vote, the council wants the program to recommend a PCE regulation plan that charts a clear path for implementation.
- Members voiced confidence in the ability of the TURA implementing agencies to develop an appropriate implementation plan for the PCE regulation as a higher hazard substance that reflects program best practices.
- Although members supported strategies to ease the regulatory impact on dry cleaners they discouraged modification of TURA policy.
 - A member representing industry stated, "It is clear: If you have ten employees, you are under TURA. Don't change what TUR planners do. The [dry cleaners'] industry association can get TURPs trained, the same as any other company or sector. Why start making exceptions? ... There are plenty of services in the program, and our facility is taking advantage of them."
 - Another concluded: "It would not be a good idea to water down the TURA program for the benefit of a particular industry. It has a good track record and methodology."
 - Another suggested that the program (a) work with dry cleaners that meet the 10 employee threshold, as provided for under the statute; (b) identify best practices based on this work; and (c) do outreach to smaller facilities to share these best practices via ERP.
 - Finally a member proposed that the committee make a consensus statement in favor of the higher hazard designation for PCE. A TURA staff member noted that the committee was already on record as supporting the higher hazard designation for PCE.

CERCLA chemicals never reported – TURI recommendation

- Mike Ellenbecker reviewed TURI's draft policy analysis supporting its provisional recommendations on CERCLA chemicals that have never been reported by TURA filers.
 - Based on hazard, the Science Advisory Board (SAB) has recommended retaining most of the substances on this list.
 - In its policy analysis, TURI added information on expected uses of each substance, and recommended taking no action on those substances that, based on existing use information, the program did not expect to be used in quantities above TURA reporting thresholds. This approach was based on conversations of the stakeholder group during negotiations of the 2006 TURA Amendments. In the negotiations, reviewing the CERCLA list was discussed as a way to bring the TURA list of reportable chemicals more in line with the federal Toxics Release Inventory.
 - Members discussed the rationale for and implications of recommendations for retaining or taking no action on chemicals that have never been reported by TURA filers.
 - Members advised against removing substances from the list simply on the basis of known or expected use patterns below current reporting thresholds.

- An industry representative stated that removing a substance from the list “creates an impression that it would be considered a reasonable alternative” to a listed substance.
- Another member stated that the law says this is a toxic or hazardous substances list. There’s an implication if a substance comes off the list, it appears to be less hazardous. Another member stated, “Taking substances off the list deludes people into thinking they’re OK.”
- Another suggested that the cost of leaving a chemical on the list is minimal and saw no benefit to removing chemicals from the list.
- Several members said they were concerned about the message sent when TURI makes a recommendation that is counter to the recommendation of the SAB.
- A member pointed out potential inconsistencies that could result from removing substances based on expected use patterns, going against the SAB’s hazard-based recommendation. For example, some of the pesticides are covered under the Stockholm Convention on Persistent Organic Pollutants; to remove these from the Toxic or Hazardous Substances List would send a confusing message, even though they are not expected to be used. The member suggested another potential inconsistency: DDT is provisionally recommended for retention while dieldrin is not; however, both are persistent organic pollutants slated for international bans. This is potentially confusing for users of the list. Another member pointed out: “This isn’t the ‘toxics most used’ list. Why remove a lot of toxic substances from the list?”
- A member said that although a chemical currently may not be used, it is impossible to predict future use of that chemical.
- A member suggested that more weight should be placed on the SAB’s scientific analysis, and less on expected use in delisting chemicals.
- A member commented, specific to pesticides but also more generally, that little or no toxicity data should not be a reason to take a chemical off the list
- One member made a point that would support removing substances from the list: retaining more substances means that even if a chemical is not reported, having it on the list means a company must keep tabs on that chemical (check whether it is being used); this can increase the time it takes for TUR planners to ensure a facility is in compliance with TURA.

Members of the public in attendance were invited to comment. An industry association representative pointed out that the Advisory Committee’s recommendation was, in effect, renegotiating the 2006 TURA Amendments, the purpose of which was to focus on higher hazard substances.

In summary, there was a consensus from committee members that if the SAB recommends a chemical for retention, it should be retained. Committee members recommend against dropping a substance from the list due to a lack of data or expected use patterns. In addition, committee members asked TURI staff to re-examine the substances that the SAB had recommended for no action, to ensure that adequate data were available to support those recommendations.

Based on these comments, TURI staff agreed to revisit their recommendations prior to the next meeting.

TURA fee structure – continuation of discussion

- At the March Committee meeting, members reviewed the current TURA fee structure and suggested that any change to the structure balance fairness and simplicity and include incentives to increase toxics use reduction. Members also requested data concerning filers and the substances reported.
 - Rich presented Harris Directory and TURA data on filers segmented by number of employees and number and nature of substances reported.
 - A member proposed basing TURA fees on the hazard level of the substance and the amount and prevalence of use.
 - Rich reiterated that although the program has the authority to adjust filer fees to reflect the Producer Price Index (PPI), fees have remained the same since 1991. Since 1991, the PPI has increased from 121 to 166, an increase of 36 per cent. This year the TURA program collected \$3.5 million in fees. If the fee structure had reflected the PPI, \$4.7 million would have been generated.
 - With no time remaining for discussion of a proposed new fee structure, Rich suggested the next meeting be scheduled with additional time for a thorough discussion of the fee options.
- The next committee meeting was scheduled for June 16, 2008 from Noon to 4 PM. And will be held at Wannalancet Mill in Lowell.
- TURI representatives invited Advisory Committee members to join its staff, the Administrative Council and the SAB for a June 10, 2008 reception at the State House to honor the Champions of Toxic Use reduction.